

ADDENDUM TO AGREEMENT made by and between Readington Township Board of Education whose office is located at 48 Readington Road, Whitehouse Station, New Jersey (hereinafter referred to as the "Local Education Agency") and Maschio's Food Services, Inc., a New Jersey Corporation having its principal place of business at 525 E. Main Street, Chester, New Jersey 07930.

WHEREAS, the Local Education Agency and Maschio's entered into a contract for a food service program;

WHEREAS, the Local Education Agency has found that Maschio's is performing the services under the contract in an effective and efficient manner;

NOW THEREFORE, in consideration of the premises and mutual covenants herein contained, the Local Education Agency and Maschio's agree as follows:

Article I: Federal and State Required Contract Language

A. DURATION OF ADDENDUM

This addendum begins on **July 1, 2014** and ends on **June 30, 2015**.

B. MANAGEMENT FEE(S) / GUARANTEES

1) MANAGEMENT FEE

The Local Education Agency shall pay Maschio's an annual management fee in the amount of \$11,008.00. The management fee shall be payable in monthly installments of \$1,100.80 per month commencing on September 1, 2014 and ending on June 30, 2015.

2) GUARANTEE RETURN

Maschio's guarantees a return to the Local Education Agency in the amount of \$35,000.00. In the event the actual bottom line of the operational report (total revenue from all sources less program costs, including the management fee) is below this amount, Maschio's shall be responsible for any shortfall with the following conditions:

3) GUARANTEE CONDITIONS

- a) There shall be no change in the LEA's policies, practices and service requirements including changes in bell schedules and or meal service periods.
- b) The proposed pricing schedule is approved.
- c) The proposed staffing schedule is approved with no alterations.
- d) The state or federal minimum wage rate and taxes in effect as of January 1, 2014, shall remain consistent throughout the year.

e) The projected number of service days for lunch will be the following:

181 Elementary School
181 Middle School
_____ High School

- f) There shall be no reduction in service days due to inclement weather schedule changes i.e. early dismissal, delayed opening.
- g) The government reimbursement rates shall be no less than the rates for the previous school year.
- h) Vendor prices shall remain constant throughout the year.
- i) Average daily attendance shall remain at the same level as the previous school year.
- j) The number of free and reduced price participants shall remain at the same level as the previous school year.
- k) USDA donated foods including both entitlement and bonus foods, and including the value of donated foods contained in processed end products will be no less than the previous school year.
- l) Usable USDA donated foods, of adequate quality and variety required for FSMC's proposed menu will be valued at no less than the previous school year's value per reimbursable meal.
- m) There shall be no restrictions in a la carte sales. Sales will be permitted at all locations for the term of this addendum.
- n) Service hours, service requirements type or number of facilities selling food and/or beverages on Local Education Agency's premises shall remain consistent throughout the year.
- o) There shall be no competitive sales during all service hours.
- p) Any changes in legislation, regulations, reimbursement rates, meal components and quantities required by the Child Nutrition Programs or changes in the State's School Nutrition Policies will affect the guarantee.
- q) Due to the volatile nature of raw material costs, Maschio's and the Local Education Agency shall review quarterly, costs associated with paper and plastic supplies and fuel surcharges on other deliveries. Any changes in Maschio's costs shall result in an appropriate change in the guarantee.
- r) There will be no cessation of labor within the LEA that would adversely affect sales.
- s) The Local Education Agency shall make payment to Maschio's for the entire amount of fees, costs and expenses which Maschio's shall have incurred as the result of union organizational activities and participation in administrative proceedings involving the unionization of personnel, which were unknown to the officers of Maschio's at the time of execution of this addendum.

- t) The number of eligible free and reduced students will be at least equal to the number of free and reduced eligible students in the previous school year.
- u) The LEA agrees to reimburse the food service account for the amount of unpaid charged meals either monthly or annually.
- v) The FSMC will not be responsible for sales decrease due to allowances given by the LEA for students to purchase lunches off campus if that allowance was not stated in the RFP.
- w) Any mandated expenses by either the federal or state governments regarding employee health care costs will reduce the guarantee in the amount of the actual cost of those expenses.
- x) The FSMC has not taken into account the effect of lunch meals distributed under the LEA's humanitarian meal policy in establishing the guarantee. Any changes in the value of lunch distributed under such policy that would negatively affect the guarantee will result in an appropriate adjustment thereof.
- y) The cost of providing alternate and standard humanitarian meals at no cost to students shall be excluded from the calculation of financial results for purposes of determining achievement of the financial guarantee. Humanitarian meals shall mean alternate meals provided at no cost to students who are unable to pay the full or reduced price for a reimbursable meal. The cost of such alternate meals shall be billed to and paid for by the LEA. If a standard reimbursable meal is provided, the standard meal price, paid or reduced, will be charged to and paid by the LEA.

In the event the foregoing conditions are not met during the school year, Maschio's guarantee obligation shall be reduced by an amount equivalent to any increased cost or loss of revenue attributable to the changes in such conditions.

C. REVISED PARAGRAPH 3 UNDER CONTRACT DURATION/RENEWALS

- 3) Each contract renewal is contingent upon the fulfillment by the FSMC of all provisions in this contract related to USDA donated foods [7 CFR 250.53(a) (12)]. Each contract renewal is subject to the availability and appropriation annually of sufficient funds as may be required to meet the extended obligation, and if funds are not available, this shall grant the LEA the opportunity to cancel the contract pursuant to the termination provisions of the contract.

D. REVISED PARAGRAPHS 1, 5 AND 6 UNDER FOOD SERVICE OPERATION

- 1) In the operation of the LEA's food service, the FSMC shall comply with the requirements of the Program Agreement, the LEA's Free and Reduced Policy Statement and with all applicable USDA program policies and regulations, including 7 CFR Parts 210, 220, 245, 250 and 3016 and applicable state and local laws. In order to operate an a la carte food service under this contract, the FSMC agrees to offer free, reduced price and full price reimbursable meals to all eligible children. [7 CFR 210.16(a)].
- 5) The FSMC shall not directly or indirectly restrict the sale or marketing of fluid milk (as described in 7 CFR 210.10(d)(4) at any time or in any place on school premises or at any school-sponsored event. [7 CFR 210.21(e)].
- 6) The FSMC shall comply with the nutrition standards for competitive foods in 7 CFR §§ 210.11 and 220.12, as amended, and the competitive food policy established by the State Agency and set forth in N.J.A.C. 2:36-1.11, which restricts items that may be

served, sold or given away as a free promotion anywhere on the school campus at any time during the school day. [7 CFR 210.11].

E. REVISED PARAGRAPH 11 UNDER USDA DONATED FOODS

- 11) The LEA must ensure that the FSMC is in compliance with the requirements of 7 CFR 250 through its monitoring of the food service operation and shall conduct a reconciliation at least annually, and upon termination of this contract, to ensure that the FSMC has credited it for the value of all donated foods received for use in the LEA's food service in the school year, including the value of donated foods contained in processed end products. [7 CFR 250.54(c)].

F. REVISED PARAGRAPHS 4 AND 5 UNDER EQUAL EMPLOYMENT/AFFIRMATIVE ACTION; NEW PARAGRAPH 11

- 4) It will comply with any regulations promulgated by the State Treasurer pursuant to N.J.S.A. 10:5-31 *et seq.*, as amended and supplemented from time to time, and the Americans with Disabilities Act. This Act (28 CFR Part 35, Title II, Subtitle A) prohibits discrimination on the basis of disability in all services, programs, and activities provided to the public and State and local governments, except public transportation services.
- 5) It will make good faith efforts to meet targeted county employment goals established in accordance with N.J.A.C. 17:27-5.2 and 7 CFR 3016.36 or 7 CFR 3019.44, as applicable.
- 11) It will comply with all applicable federal Equal Employment Opportunity standards and orders under 41 CFR part 60, Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor and Executive Order 11246, as amended by Executive Order 11375, Amending Executive Order 11246 Relating to Equal Employment Opportunity.

G. NEW PARAGRAPH 2 UNDER RE-ENTITLED WORK HOURS/WORKPLACE PROVISION

- 2) *Drug-free Workplace Statement.* The FSMC agrees to provide a drug-free workplace for their employees and comply with the provisions and regulations of the Drug Free Workplace Act of 1988 (41 U.S.C. 701 *et seq.*, as amended) and applicable state laws and regulations [7 CFR 3021]. Failure to abide by these requirements may subject the LEA and/or FSMC to the penalties described in 7 CFR 3021.510.

H. REVISED PARAGRAPHS 1 AND 2 UNDER REBATES, DISCOUNTS AND CREDITS

- 1) The FSMC shall charge the LEA only for costs that are actual and allowable, net of all discounts, rebates and other applicable credits accruing to or received by the FSMC, to the extent those credits are allocable to the allowable portion of the costs billed to the LEA. The FSMC's determination of allowable costs shall be made in compliance with the applicable USDA and Child Nutrition Program regulations and Office of Management and Budget Cost Circulars. [7 CFR 210.21(f) (1) (i) and (iii)].
 - A. The FSMC will exclude all unallowable costs from its billing documents and certify that only allowable costs are submitted for payment and that records have been established that maintain visibility of unallowable costs, including directly associated costs, in a manner suitable for contract cost determination and verification. [7 CFR 210.21(f)(1) (ii)(B)].
- 2) The FSMC shall identify the amount of each discount, rebate and other applicable credit on bills and invoices presented to the LEA for payment and individually identify the amount as a discount, rebate, or in the case of other applicable credits, the nature of the credit.

The FSMC shall report this information monthly. [7 CFR 210.21(f) (1)(iv)].

- 3) The FSMC shall identify the method by which it will report discounts, rebates and other applicable credits allocable to the contract, that are not reported prior to the conclusion of the contract, by issuing a check to the Local Education Agency. [7 CFR 210.21(f) (1)(v)].
- 4) The FSMC shall maintain documentation of costs and discounts, rebates and other applicable credits, and shall furnish such documentation upon request to the LEA, State Agency or USDA. [7 CFR 210.21(f)(1)(vi)].

I. REVISED PARAGRAPH 2 UNDER RECORDS

- 2) The FSMC shall grant the LEA, the New Jersey Department of Education, the New Jersey Department of Agriculture, the United States Department of Agriculture, the Comptroller General of the United States and its State counterparts, or any of their duly authorized representatives, access to any books, documents, papers and records of the FSMC which are directly pertinent to this contract, for the purpose of making audit, examination, excerpts and transcriptions. [7 CFR 3016.36(i) (10)].

J. REVISED SOC 1 REPORT PROVISION

The FSMC shall have an annual service audit of the FSMC's internal controls performed by an independent audit firm engaged by the FSMC. The service audit shall be as prescribed in A.I.C.P.A. Statement on Standards for Attestation Engagements (SSAE) No. 16. The FSMC shall provide the LEA with a Service Organization Control (SOC) 1 Type 2 Report in conformity with SSAE No. 16 to enable the LEA to meet its annual audit obligation under New Jersey Department of the Treasury Circular No. 04-04-OMB. [7 CFR 3016.26; 7 CFR 3052.210(f); N.J.S.A. 18A:23-1].

K. REVISED NEW JERSEY BUSINESS REGISTRATION REQUIREMENTS

- 1) Prior to the time a contract, purchase order or other contracting document is awarded or authorized, the FSMC provided the LEA, for itself or any other named subcontractor, with a current Business Registration Certificate issued by the New Jersey Department of Treasury, Division of Revenue or, at the option of the LEA, with sufficient information for the LEA to verify proof of business registration of the FSMC through a computerized system maintained by the State of New Jersey.
- 2) The FSMC shall provide written notice to its subcontractors, if any, of the responsibility to submit proof of business registration to the FSMC. The FSMC shall not enter into a contract with a subcontractor unless the subcontractor first provides the FSMC with proof of a valid business registration. The FSMC shall maintain and submit to the LEA a list of any subcontractors, and their addresses that may be updated from time to time during the course of this contract. Before final payment on this contract is made by the LEA, the FSMC shall submit **a complete** and accurate list and the proof of business registration of each subcontractor or supplier used in the fulfillment of this contract, [N.J.S.A. 52:32-44(1)(c) **and (d)**]. or shall attest that no subcontractors were used.
- 3) For the term of this contract, the FSMC, **the subcontractor, if any**, and each of its affiliates [N.J.S.A. 52:32-44(g)(3)] shall collect and remit to the Director, New Jersey Division of Taxation, the use tax due pursuant to the Sales and Use Tax Act, P.L.1966, c.30 (C.52:32B-1 *et seq.*) on all sales of tangible personal property delivered into New Jersey. [N.J.S.A. 52:32-44(g)].

L. REVISED AND RE-ENTITLED POLITICAL CONTRIBUTIONS PROVISION

- 1) ANNUAL REPORTING ("CHAPTER 271, Section 3" Reporting). The FSMC is advised of its responsibility to file an annual disclosure statement on political contributions with the New Jersey Election Law Enforcement Commission (ELEC), pursuant to N.J.S.A.19:44A-20.27 (L. 2005, c. 271, §3 as amended) if in a calendar year the FSMC receives one or more contracts valued at \$50,000.00 or more. It is the FSMC's responsibility to determine if filing is necessary. Failure to file can result in the imposition of penalties by ELEC.
- 2) POLITICAL CONTRIBUTION DISCLOSURE. During the term of this contract, the FSMC and any person or business entity having an interest in the FSMC, shall not make any contribution reportable under N.J.S.A. 19:44A-1 *et seq.* to any member of the board of education of the LEA. [N.J.A.C. 6A:23A-6.3]. Included in its response to the LEA's Request for Proposal, the FSMC signed and submitted a Political Contribution Disclosure Form listing the information set forth in N.J.S.A. 19:44A-20.26. [N.J.A.C. 6A:23A-6.3].

M. REVISED STATEMENT OF OWNERSHIP INTEREST PROVISION

Included in its response to the LEA's Request for Proposal, the FSMC submitted a statement setting forth the names and addresses of all stockholders and partners owning 10% or greater interest in the FSMC, as set forth in N.J.S.A. 52:25-24.2. [N.J.S.A. 18A:18A-4.4d]. The LEA will review this Statement to verify its consistency with the Political Disclosure form required under this contract in paragraph Q.

N. DISCLOSURE OF INVESTMENT ACTIVITIES IN IRAN

Prior to entering into this addendum, the FSMC signed and submitted a Disclosure of Investment Activities in Iran, pursuant to N.J.S.A. 18A:18A-49.4, which requires the LEA to implement and comply with the provisions of P.L. 2012, c. 25 (N.J.S.A. 52:32-55, *et. seq.*). P.L. 2012, c. 25 requires all bidders to complete a certification that attests that neither the bidder, nor any of its parents, subsidiaries and/or affiliates is listed on the list developed by the New Jersey Department of Treasury's List of Persons or Entities Engaging in Prohibited Investment Activities in Iran, pursuant to section 3 of P.L.2012, c. 25 (N.J.S.A. 52:32-57).

O. CONSTRUCTION AND EFFECT

The LEA and the FSMC agree that Article I of this addendum is intended to comply with applicable federal and State procurement and USDA program requirements. In the event that any provision contained in Article I should conflict with any other provision contained in this addendum or any attachment to this addendum, the provisions of Article I shall control.

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Article II: Additional Addendum Language

A. MISCELLANEOUS PROVISIONS

1. Currently the NJ State Department of the Treasury has determined that some supplies purchased by the Food Service Management Company on behalf of the LEA are subject to sales and use tax. It is clear that the ownership of said goods is never an asset of the Food Service Management Company. The Local Education Agency has ownership of said goods at all times and that the inventory asset of goods not yet used is accounted for in the Local Education Agency monthly financial report. The Local Education Agency has indicated to the Food Service Management Company that they would like to absorb the cost of this tax as a part of the supply cost so that the Food Service Management Company can continue to pay the distributor.

IN WITNESS WHEREOF, Maschio's and the Local Education Agency have caused the within Addendum to the contract to be executed on the day and year written above.

MASCHIO'S FOOD SERVICES, INC.

By:  _____

Name: Kenneth N. Torchia

Dated: 5/16/14 _____

Title: Chief Executive Officer

LOCAL EDUCATION AGENCY

By: _____

Dated: _____

Name: _____

Title: _____

INDEX RATE/FOOD SERVICE MANAGEMENT COMPANY (FSMC) FEE WORKSHEET

School Year 2014-2015

Complete and submit with the "Local Education Agency (LEA)/FSMC Renewal Addendum Checklist (Form16). Complete all sections

Agreement #:01904350

LEA (District/School): Readington Township Board of Education

FSMC: Maschio's Food Services, Inc.

Section A: FSMC Fees – List each fee separately, where applicable:

1 st Renewal (2 nd year of service)		
	Fee 1	Fee 2
Base Year Fee(s) (2013-2014)		
Renewal Fee(s) (2014-2015)		

OR

2 nd Renewal (3 rd year of service)		
	Fee 1	Fee 2
Base Year Fee(s) (2012-2013)		
First Renewal Fee(s) (2013-2014)		
Second Renewal Fee(s) (2014-2015)		

OR

3 rd Renewal (4 th year of service)		
	Fee 1	Fee 2
Base Year Fee(s) (2011-2012)	\$10,585	
First Renewal Fee(s) (2012-2013)	\$10,903	
Second Renewal Fee(s) (2013-2014)	\$10,903	
Third Renewal Fee(s) (2014-2015)	\$11,008	

OR

4 th Renewal (5 th year of service)		
	Fee 1	Fee 2
Base Year Fee(s) (2010-2011)		
First Renewal Fee(s) (2011-2012)		
Second Renewal Fee(s) (2012-2013)		
Third Renewal Fee(s) (2013-2014)		
Fourth Renewal Fee(s) (2014-2015)		

Section B: Date of Addendum Approval/Effective Index Rate:

Public: Date of board meeting approving renewal of FSMC contract/addendum: ____/____/____ Index Rate Percentage in effect on date of meeting: 1.0%

Or

Non Public: Date addendum was signed by the LEA: ____/____/____ Index Rate Percentage in effect on date of signature by LEA: _____%

The Index Rate Percentage is posted on: NJ Department of Community Affairs website: http://www.state.nj.us/dca/divisions/dlgs/programs/lpci_docs/cur_index_rate.pdf

The increase in the FSMC fee (s) cannot exceed the Index Rate posted at the time of renewal by the Board of Education(Public) or execution by the LEA (Non Public LEAs) (N.J.S.A.18A:18A-42)

Section C: Signature:

Signature of Business Administrator or Non Public Administrator
responsible for the School Nutrition Program

Printed Name

Date

STATE AGENCY USE ONLY:

Comments:

Fee 1: \$ increase: _____
% increase: _____

Fee 2: \$ increase: _____
% increase: _____

Not Approved: _____
Date: _____

Approved: _____
Date: _____